88- 1740

No. 88-

Supreme Court, U.S.
FILED
APR 26 1989
JOSEPH F. SPANIOL, JR.
CLERK

In The
Supreme Court of the United States
October Term, 1988

In re:

ARNOLD JEROME KARZOV,

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

SIDNEY Z. KARASIK
100 West Monroe Street
Chicago, Illinois 60603
(312) 782-7295

Attorney for Petitioner

American Reprographics Management, Inc.™ (312) 332-ARMI

QUESTIONS PRESENTED

1. Whether Equal Protection under the 14th Amendment is violated by the supreme court of a state under a virgin rule (theretofore uninterpreted by that court) prohibiting the "giving or lending of anything of value to a judge" where the court contemporaneously absolved certain "outstanding" lawyers for admitted infractions of the rule because they "sailed in uncharted waters", but disciplined other lawyers, including Petitioner, for conduct allegedly covered by the same rule?

2. Whether Due Process under the 14th Amendment was denied in the imposition of discipline of a lawyer who could not "be deemed to have been on notice that the Court. . . would condemn the conduct for which he was [disciplined]"[1], where the disciplinary rule under which he was condemned was impermissibly vague, the meaning and applicability of which was subject to wide debate among the State bar, and which produced a "crazy quilt" of inconsistent and irrational sanctions by the state supreme court?

---

[1] From *In re Ruffalo*, 390 U.S. 544, 554 (1968), 88 S. Ct. 1222, 20 L. Ed. 2d 117 (1968).

TABLE OF CONTENTS

Page

Reference to Reports 1

Jurisdiction 2

Rules, Statutes and Constitution Involved 2

Statement of the Case 2

How the Federal Constitutional Questions were Presented and Preserved 4

Argument 6

I. Differential and Disparate Discipline Imposed On Petitioner By The Supreme Court of Illinois, While Other Attorneys Are Exonerated For Admitted Infractions Of The Same Disciplinary Rule, Violates The Equal Protection Clause Of The Fourteenth Amendment of the U.S. Constitution 6

A. The Illinois court's "crazy quilt" of irreconcilable, irrational dispositions contravenes Equal Protection 10

B. Petitioner was entitled to the same exculpatory consideration as *Corboy* respondents, and others, who were exonerated notwithstanding that they made prohibited loans to a judge, because there was no "guiding precedent" for their conduct 12

C. As a "quasi-criminal proceeding" the instant attorney discipline case is closely analogous to those criminal cases which have sustained a claim of unequal protection where the criminal laws have been discriminatorily enforced 12

Page

II. Due Process Under the Fourteenth Amendment Was Denied To Petitioner Because He Was Disciplined By The State Supreme Court For Infraction Of A Disciplinary Rule Whose Meaning Was Vague And Debatable And Where The Court Had Not Theretofore Issued A "Settled Opinion" Interpreting The Rule 13

Conclusion 15

Appendix

Opinion of the Illinois Supreme Court ..... App. A

Petition for Rehearing ..... App. B

Order of Supreme Court, Denying Petition for Rehearing ..... App. C

Order of Illinois Supreme Court, Staying Mandate ..... App. D

Page

TABLE OF CITATIONS

In re James G. Andros, 64 Ill. 2d 419 (1976) 6

Baird v. *State Bar,* 401 UlS. 1, 91 S. Ct. 702, 27 L. Ed. 2d 639 (1971) 6

Cohen v. *Hurley,* 366 U.S. 117, 81 S. Ct. 954, 6 L. Ed. 2d 156 (1961) 6, 7

In re Corboy, 124 Ill. 2d 29, 528 N.E. 2d 689 (June 1988) 4, 5, 7, 8, 9, 10, 12, 14, 15

In re D'Angelo, 126 Ill. 2d 45, 533 N.E. 2d 861 (1989) 11

In re Harris, 93 Ill. 2d 285, 443 N.E. 2d 557 (1962) 3

In re Heller, 126 Ill. 2d 94, 533 N.E. 2d 824 (1988) 11

In re Jones, 125 Ill. 2d 371 532 N.E.2d 239 (1989) 5, 9, 10, 12, 15

In re Inquiry Concerning a Judge, 357 So. 2d 172, 181 (Sp Ct. Fla 1978) 14

In re Karzov, 126 Ill. 1d 33, 533 N.E. 2d 856 (1989) 3-4, 11

In re Ketchum, 124 Ill. 2d 50, 528 N.E. 2d 689 (1988) 5, 9

Koenigsberg v. *State Bar of California,* 336 U.S. 36, 45, 81 S. Ct. 997, 6 L. Ed. 2d 105 (1961) 7

Lenske v. *Sercombe,* 266 F. Supp. 609 (D.C. Ore. 1967) 13

Moss v. *Hornig,* 314 F. 2d 89, 91 (2d Cir. 1963) 12

Peterson v. *Sharan,* 474 F. Sup. 1215 (D.C. Minn. 1979) 12

In re Powell, 126 Ill. 2d 15, 533 N.E. 2d 867 11

In re Rothenberg, 127 Ill. 2d 139 (1989) 11

In re Ruffalo, 390 U.S. 544, 551, 88 S. Ct. 1222, 20 L. Ed. 2d 117 (1968) ..... i, 12, 13

In re Sarelas, 497 F. 2d 926 (7th Cir. 1974) 13

In re Saladino, 71 Ill. 2d 263 (1978) 6

Page

Schware v. *Board of Bar Examiners,* 353 U.S. 232, 238-239 7

Snowden v. *Hughes,* 321 U.S. 1, 8, 64 S. Ct. 397, 88 L. Ed. 497 (1944) 12

Spevack v. *Klein,* 385 U.S. 511, 87 S. Ct. 625, 17 L. Ed. 574 (1967) 6

United States v. *Alarik,* 439 F. 2d 1349 1350 (8th Cir. 1971) 12

United States v. *Sacco,* 428 F. 2d 264, 271 (9th Cir. 1970) 12

United States v. *Scott,* 521 F. 2d 1188, 1195 (9th Cir. 1975) 12

Wilner v. *Committee on Character,* 373 U.S. 96, 83 S. Ct. 1175, 10 L. Ed. 2d 224 (1963) 6

STATUTES

28 U.S.C. §1257(3) 2

Rule 7-110 (a) of Illinois Code of Professional Responsibility, 107 Ill. 2d R. 1-1u1, et seq. 2, 8

Ill. Rev. Stats. chap. 110A, Can. 7 2

Ill. Rev. Stats. chap. 110A, pars. 751, et seq. 3

Rule 7-110(a) and Rule 65(C)(4) Code of Judicial Conduct, 107 Ill. 2d Rules 65(c)(4) 9

CONSTITUTION

U.S.C. Const. Amendment XIV, Sec. 1 2

AUTHORITIES

Touhy and Warren, *GREYLORD: JUSTICE CHICAGO STYLE* (G.P. Putnam Sons, 1988). 2

HISTORICAL AND PRACTICE NOTES, Smith-Hurd Ill. Ann. Stats. chap. 110A, pp. 611-615 3

No. 88-

In The
Supreme Court of the United States
October Term, 1988

In re:

ARNOLD JEROME KARZOV,

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

REFERENCE TO REPORTS

The opinion of the Supreme Court of Illinois is reported at 126 Ill. 2d 33, 533 N.E. 2d 856 (1989), and is appended hereto as App. A, 1a-9a. Petitioner's PETITION FOR REHEARING is appended hereto at App. B, 1b-10b. The order of the Supreme Court of Illinois denying rehearing is appended hereto as App. C. 1c. The order of the Supreme Court of Illinois staying mandate is appended hereto as App. D, 1d.

JURISDICTION

The judgment of the Supreme Court of Illinois was entered on December 15, 1988. The petition for rehearing was denied by the Supreme Court of Illinois on January 30, 1989. This PETITION FOR WRIT OF CERTIORARI is timely filed within 90 days of the latter date. This Court's jurisdiction is invoked under 28 U.S.C. §1257 (3).

RULES, STATUTES AND CONSTITUTION INVOLVED

Rule 7-110 (a) of the Illinois Code of Professional Responsibility, 107 Ill. 2d R. 1-101, et seq., Ill. Rev. Stats. chap. 110A, Can. 7 provides in pertinent part:

> (a) A lawyer shall not give or lend anything of value to a judge . . . except that a lawyer may make a contribution to the campaign fund of a candidate for such office.

U.S.C. Const. Amendment XIV, Sec. 1:

> Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This attorney disciplinary proceeding was an outgrowth of a federal criminal prosecution of a former circuit court judge, Reginald J. Holzer (hereafter "Holzer") who, along with several other judges, was convicted of mail fraud, racketeering and extortion.

In the wake of the scandal known as Operation Greylord[2] Petitioner was charged by the Administrator of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois with violating, *iner alia,* Disciplinary Rule 7-110 (a)

---

[2] See Touhy and Warren, GREYLORD: JUSTICE CHICAGO STYLE (G.P. Putnam Sons, 1988).

(quoted supra).[3]

The two-count complaint lodged against Petitioner charged in gist, that on one occasion Petitioner furnished Holzer, at Holzer's request, the name of a loan officer of a bank which Petitioner represented as counsel, at which bank Holzer subsequently obtained an unsecured bank loan; and on another occasion complied with Holzer's request that Petitioner lend the judge $1,000 in cash, to be repaid shortly thereafter (half of which was repaid several years later when Holzer was under investigation by the federal authorities).

With respect to Count I of the Administrator's Complaint the Hearing Board found and concluded that Petitioner did not give or lend a thing of value by merely furnishing the name of a loan officer and dismissed that count.

With respect to the second count, however, the loan of $1,000 to the judge was deemed to be a violation of Rule 7-100 (a) (supra). The Hearing Panel concluded that Petitioner had a duty to refuse the loan regardless of any adverse consequences that Petitioner or his clients might suffer at the hands of the judge on account of the refusal. Petitioner also failed to advise opposing counsel or the authorities about the loan request, all of which were determined to be violative of other canons, in addition to Rule 7-110(a).

The Hearing Panel expressly found:

> He [Karzov] concluded the best thing to do would be to make the loan and 'allow him to *victimize me* in that way.' He said that *he did not expect*

---

[3] Under the Attorney Disciplinary System promulgated by the Supreme Court of Illinois (Ill. Rev. Stats, chap. 110A, pars. 751, et seq.) a four-level procedure is established. An Inquiry Board (acting as a "grand jury")— may vote a formal complaint which then is the subject of responsive pleadings, discovery and an evidentiary hearing by a Hearing Board (trial) and appellate review by a Review Board. The Boards are composed of lawyers whose determinations to impose discipline are only recommendations to the Supreme Court which alone orders the discipline. *In re Harris,* 93 Ill. 2d 285, 443 N.E. 2d 557 (1962). See comprehensive discussion of the System under **Historical and Practice Notes,** Smith-Hurd Ill. Ann. Stats. chap. 110A, pp. 611-615.

> *favored treatment and he asked for none. (Hrg. Bd. Rpt. 7). (Emphasis added).*

The Hearing Panel recommended that Respondent be suspended from practice for 15 months. On review, the Review Board disagreed with the dismissal of Count I, agreed with the Hearing Panel's findings as to the second count, and recommended suspension for a period of two years.

On appeal to the Supreme Court (App. A, 1a - 9a) the Supreme court agreed with the original conclusion of the Hearing Board that Petitioner violated none of the disciplinary rules charged in Count I of the complaint and accordingly dismissed those charges. (126 Ill. 2d at 41); (App. A, 6a).

As to the second count, however, the Supreme Court concluded that Petitioner violated Rule 7-110(a) in making the $1,000 cash loan to Holzer, and rejected Petitioner's argument that there was "a qualitative difference between a bribe and a loan" (126 Ill. 2d at 43); (App. A, 8a). It ignored Petitioner's claim that he made the loan under extortionate circumstances and not with an improper motive — although Holzer was convicted of extorting $1000.00 from Karzov.

The Supreme Court refused the Administrator's demand for disbarment, but imposed a sanction of 18 months' suspension. (126 Ill. 2d at 45); (App. A, 9a).

HOW THE FEDERAL CONSTITUTIONAL QUESTIONS WERE PRESENTED AND PRESERVED

Preceding by a few months the instant disciplinary opinion, the Supreme Court of Illinois issued its first interpretation of Rule 7-110(a) in a series of consolidated cases, *In re Corboy, et al.,* 124 Ill. 2d 29, 528 N.E. 2d 689 (1988). In *Corboy,* a number of lawyers were charged with violating the Rule by reason of having made a gift or a loan to another judge involved in the operation Greylord scandal, Richard LeFevour, presiding judge of the First Municipal Department of the Circuit Court of Cook County at the time of the gifts and loans.

As posed by the Court:

> The crucial common question [in the *Corboy* related cases] is one of first impression in this

> court: What conduct constitutes giving or lending 'a thing of value' to a judge so that it falls within the proscription of our Rule 7-110(a)? (124 Ill. 2d at 33).

Four of the attorneys in *Corboy* had paid $1,000 each to Judge LeFevour at the solicitation of another attorney named Walter Ketchum[4] for the purpose of settling a hospital bill incurred by the judge's mother. None of those attorneys had practiced before the judge, but each had a limited contact with the First Municipal District of the Circuit Court where LeFevour presided.

With respect to two other attorneys involved in *Corboy* "a different factual picture [was] presented" (124 Ill. 2d at 46) in that each of them who had cases pending in the judge's municipal district had made personal loans of up to $5,000 to LeFevour to help him pay taxes.

Declaring that Rule 7-110(a) was a "prophylactic rule" the Court found that all six of the attorneys involved in *Corboy* were *guilty* of its violation, but for reasons hereafter discussed under ***ARGUMENT*** the Court found it inappropriate to impose sanctions and discharged all of the attorneys. (124 Ill. 2d at 46, 50).

Contemporaneously with the instant decision involving Karzov, the Illinois Supreme Court decided *In re Jones,* (125 Ill. 2d 371 (1989) where the attorney was charged with making a $15,000 undocumented loan to Judge Holzer, which loan was never repaid. Notwithstanding that the attorney had a "personal" case pending before Holzer, the court, on a rationale discussed post, exonerated Jones.

In the case at bar, Karzov timely filed his Petition for Rehearing in the Supreme Court of Illinois. (App. B, 1b-10b). In that petition petitioner contended that the unevenhanded disparate disciplines meted out by the Supreme Court violated equal protection and due process. The Court denied the petition. (App. C, 1c).

---

[4] Ketchum was disciplined in a companion opinion, *In re Ketchum,* 124 Ill. 2d 50, 528 N.E. 2d 689 (1988).

ARGUMENT

I. DIFFERENTIAL AND DISPARATE DISCIPLINE IMPOSED ON PETITIONER BY THE SUPREME COURT OF ILLINOIS, WHILE OTHER ATTORNEYS ARE EXONERATED FOR ADMITTED INFRACTIONS OF THE SAME DISCIPLINARY RULE, VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION.

As the ultimate decision maker with respect to attorney discipline, the Supreme Court of Illinois has often expressed and followed the principle that "uniformity in discipline" should be achieved wherever possible. (*In re James G. Andros,* 64 Ill. 2d 419 (1976); *In re Joseph C. Saladino,* 71 Ill. 2d 263 (1978) ("Predictability and fairness require a degree of consistency in similar types of midconduct.")).

The rationale for uniformity in discipline is the tacit and clear recognition that lawyers confronted with charges of professional misconduct, have certain rights under the Equal Protection and Due Process provisions of the Federal (as well as the Illinois State) Constitution. (Ill. Const. Art. I, sec. 2) (Ill. Rev. Stats. Vol. 1, State Bar Assn. Ed. p. 13). (*Spevack* v. *Klein,* 385 U.S. 511, 87 S. Ct. 625, 17 L. Ed. 574 (1967); *Wilner* v. *Committee on Character,* 373 U.S. 96, 83 S. Ct. 1175, 10 L. Ed. 2d 224 (1963); *Cohen* v. *Hurley,* 366 U.S. 117, 81 S. Ct. 954, 6 L. Ed. 2d 156 (1961).[5]

In *Baird* v. *State Bar,* 401 U.S. 1, 91 S. Ct. 702, 27 L. Ed. 2d 639 (1971) this Court ruled:

> The practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character. (401 U.S. at 8).

In *Wilner* v. *Committee on Character,* 373 U.S. 96, 83 S. Ct. 1175, 10 L. Ed. 2d 224 (1963), the court held:

---

[5] Result in *Cohen* overturned in *Spevack,* supra.

> 'A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene Due Process or Equal Protection clauses of the Fourteenth Amendment.' (373 U.S. at 103-104 quoting *Schware* v. *Board of Bar Examiners,* 353 U.S. 232, 238-239).

In *Cohen* v. *Hurley,* supra, the court declared:

> The issue is not, of course, whether lawyers are entitled to due process of law in matters of this kind, but, rather, what process is constitutionally due them in such circumstances. We do not hold that lawyers, because of their special status in society, can therefore be deprived of constitutional rights assured to others, but only, as in all cases of this kind, that what procedures are fair, what State process is constitutionally due, *what distinctions are consistent with the right to equal protection* all depend upon the particular situation presented . . . (366 U.S. at 129) (Court's emphasis underlined; Petitioner's emphasis italicized).

The case at bar involves the construction of a state court rule regulating professional conduct and the enforcement of that rule. In *Koenigsberg* v. *State Bar of California,* 366 U.S. 36, 45, 81 S. Ct. 997, 6 L. Ed. 2d 105 (1961), this Court held that state court rules in respect to professional conduct are to be treated in the same manner as statutes in determining whether there has been a violation of Due Process or Equal Protection.

In the case at bar Petitioner respectfully submits that the Supreme Court of Illinois in the spate of disciplinary cases emanating from Operation Greylord, applied untenably inconsistent dispositions under its Rule 7-110(a), starting with the progenitor case, *In re Corboy,* 124 Ill. 2d 29, and the various disciplinary cases that shortly followed. The disparate application of that Rule to basically similar infractions by different attorneys (whose conduct antedated *Corboy*) raises a serious question of equal protection.

The constitutional cases in this Court, above-cited, establish that Petitioner is a member of a protected class–and that the differential and unequal dispositions between members of the same class irrationally infringe upon Petitioner's right to equal protection with respect to a "fundamental right". In its analysis of Rule 7-110(a) the Supreme Court declared:

> The policy objective of Rule 7-110(a) is the preservation of an independent and impartial judiciary. The rule is prophylactic and is designed not only to forestall lawyers from seeking to exercise improper influence over the judiciary, *but also to eliminate even the appearance of improper influence.* (124 Ill. 2d at 38) (Emphasis added).

The Illinois court declined to decide whether the Rule is or is not a *per se* rule, but agreed that its application:

> . . . does not depend upon the subjective state of the attorney's mind. If it did, the prophylactic effect of the rule would be lost since only attorney gifts or loans which were intended to influence or may tend to influence a judge would be proscribed. (*id* at 39).

In short, in its lead-off case interpreting the rule, the court proclaimed a literal interpretation and a strict application of the rule. In that light the court then ruled:

> For the foregoing reasons, we hold that these four respondents *violated* Rule 7-110(a). However, we hold that we cannot censure any of these respondents for their conduct. *They acted without the guidance of precedent or settled opinion, and there was, apparently, considerable belief among members of the bar, that they had acted properly.* (124 Ill. 2d at 45) (Emphasis added).

With reference to the other respondents in *Corboy*–who made loans to Judge LeFevour in amounts ranging from $2,000 to $5,000– the Supreme Court dismissed those charges as well with the rationale:

> Here, as in the cases of respondents Corboy, Maddux, Harte and Madler, respondents Tuite and

> Banks were *sailing in uncharted waters.* In fact, the record discloses that these respondents were not aware of the prohibition of Rule 7-110(a) and certainly could not have been aware of the construction that we have placed, for the first time, on that rule in this opinion. (*id.* at 49) (Emphasis added).[6]

In *In re Ketchum,* 124 Ill. 2d 50, 528 N.E. 2d 684 (1988), a *per curiam* opinion issued simultaneously with the *Corboy* cases, the court (imposing a two-year suspension upon the respondent-attorney) noted that:

> In that opinion [*Corboy*] we held that evidence of dishonest intent and motive is not necessary to justify imposition of discipline . . . We further held that evidence showing a lack of dishonest intent is usually only appropriate to determine the nature and severity of the sanction imposed. (124 Ill. 2d at 57-58).

Notwithstanding the court's tenet that "state of mind" or "motive" is irrelevant to the liability of an attorney giving or lending a thing of value to a judge, the court in *In re Jones, Jr.,* 125 Ill. 2d 371, 532 N.E. 2d 239, (1989), exonerated the attorney there charged with making a $15,000 loan to Judge Holzer with funds the lawyer personally borrowed from his own bank. The court noted (125 Ill. 2d at 375):

> [P]rior to the loan in 1984, respondent. . . appear[ed] before Holzer while representing himself in a purely

---

[6] Because of an alleged inconsistency between the proscription in Rule 7-110(a) and Rule 65(c)(4) of Code of Judicial Conduct (107 Ill. 2d Rules 65(C)(4)) permitting a judge to accept gifts or loans from a lawyer under specific circumstances, the Supreme Court in *Corboy* specially amended Rule 7-110(a) of the Code of Professional Responsibility effective with the date of its opinion so that the rule now provides:

> A lawyer shall not give or lend any thing of value to a judge, official, or employee of a tribunal, except those gifts or loans which a judge or a member of his family may receive under Rule 65(C)(4) of the Code of Judicial Conduct, except that a lawyer may make a contribution to the campaign fund of a candidate for such office. (124 Ill. 2d at 46).

> personal matter. . . Holzer ruled against respondent. . . . Holzer introduced two prospective clients to respondent. One of these individuals ultimately retained respondent and respondent received approximately $1200 in legal fees for his services.

Like the respondents in *Corboy,* supra, the court in *Jones* expressly noted that Jones had violated Rule 7-110(a) but in contrast to *Corboy* remarked:

> The relationship of the parties, coupled with the size of the loan, might suggest that respondent was not motivated entirely by charity and compassion for the financially strapped Holzer. (125 Ill. 2d at 380).

Nevertheless, the Illinois court concluded that Jones' misconduct did not warrant any discipline because his conduct was *not* "accompanied by any corrupt or improper motive". (*id* at 381) -notwithstanding that in *Corboy* and subsequent cases, the court ruled that an attorney's motives in making a gift or a loan to a judge are *irrelevant* in determining a violation of the rule albeit considered under the issue of discipline.

A. The Illinois courts' "crazy quilt" of irreconcilable, irrational dispositions contravenes Equal Protection.

Since its decision in *Corboy* (June 1988), the Illinois Supreme Court disciplined or absolved 13 or more attorneys in connection with Rule 7-110(a) charges. Petitioner submits that the variations in the dispositions cannot be defended or rationalized on the ground that the court held motive to be irrelevant on the issue of a violation, but not on the issue of discipline. This is because the erratic pattern of the cases reveal a shifting standard by which the purported dichotomy was either ignored or blurred:

In re Corboy, supra (charges discussed above); (Rule 7-110(a) violated regardless of non-venal motive but charges dismissed against six attorneys because no precedential interpretation of the rule at the time of their conduct in the early '80s.)

In re Ketchum, supra (two-year suspension for making loans to Judge LeFevour, a long time friend of Respondent, for the

benefit of whose mother respondent solicited a $1,000 contribution from the attorneys in *Corboy*. Ketchum's loans held to be improper "under any analysis of Rule 7-110(a)" (124 Ill. 2d at 58)).

In re Powell, 126 Ill. 2d 15, 53 N.E. 2d 867 (1989) (77 year old attorney, personal acquaintance of Holzer for many years prior to Holzer becoming a judge, rarely appearing in court before any judge, disbarred for having a client post collateral for a bank loan made in 1979 when Powell's client had a case before Holzer. Powell's professed motives of compassion for an old acquaintance financially in trouble, rejected on both issue of violation of the rule, and discipline).

In re D'Angelo, 126 Ill. 2d 45, 533 N.E. 2d 861 (1989). (Respondent arranged for Avis car rentals from 1982-1984 to several judges including Judge LeFevour and certain politicians. Respondent's claim of "ordinary social hospitality" rejected. Respondent disbarred.)[7]

In re Heller, 126 Ill. 2d 94, 533 N.E. 2d 824 (1988) (two attorneys practicing regularly before Judge Holzer disbarred for repeated procurement of bank loans for Holzer over a period 1972-79).

In re Rothenberg 127 Ill. 2d 139 (1989). (76-year old attorney made loans totaling $8,700 to Judge Holzer during period 1978-1984. Relationship between Holzer and respondent antedated by many years Holzer becoming a judge and Holzer a one-time member of respondents's law firm, respondent claiming not to be aware of prohibition against a lawyer's lending money to a judge. Respondent suspended for one year.)

In re Karzov 126 Ill. 2d 33, 533 N.E. 2d 856 (1989), Instant case. ($1,000 loan made to Judge Holzer under extortionate circumstances. (Holzer was convicted for that extortion). No cases pending before Judge Holzer at the time of loan. Karzov

---

[7] In *D'Angelo* the court said:

> It cannot be argued that these car rentals were permissible gifts simply because Respondent did not appear personally before some of the judges in question. (126 Ill. 2d at 55) *Cf.* reasons for excusal of *Corboy* and *Jones* respondents, supra.

suspended for 18 months.)

B. Petitioner was entitled to the same exculpatory consideration as *Corboy* respondents, and others, who were exonerated notwithstanding that they made prohibited loans to a judge, because there was no "guiding precedent" for their conduct.

In common with the respondents in *Corboy* and *Jones,* Petitioner like they "acted without the guidance of precedent or settled opinion" and in the same environment of uncertainty and debatability as to the interpretation of Rule 7-110(a). Like they, Petitioner was "not aware of the prohibition of Rule 7-110(a) at the time of his conduct and "certainly could not have been aware of the construction that [the Supreme Court] . . . for the first time placed on that Rule" in the *Corboy* opinion. (124 Ill. 2d at 49).

In short, Petitioner, like the *Corboy* and *Jones* respondents "sailed in uncharted waters". Nevertheless the Illinois Court allowed those respondents to sail free while Petitioner and others under strikingly similar circumstances foundered on the shoals of discipline.

C. As a "quasi-criminal proceeding" the instant attorney discipline case is closely analogous to those criminal cases which have sustained a claim of unequal protection where the criminal laws have been discriminatorily enforced.

This Court has held that attorney descipline is a "quasi-criminal proceeding". *In re Ruffalo,* 390 U.S. 544, 551. Therefore, Petitioner's claim of unequal protection is closely analogous to a charge that criminal laws have been discriminatorily enforced. See: *United States* v. *Scott,* 521 F. 2d 1188, 1195 (9th Cir. 1975); *United States* v. *Alarik,* 439 F. 2d 1349, 1350 (8th Cir. 1971); *United States* v. *Sacco,* 428 F. 2d 264, 271 (9th Cir. 1970); *Moss* v. *Hornig,* 312 F. 2d 89, 91 (2d Cir. 1963).

Courts have applied the same standard with respect to equal protection even when no criminal sanctions are involved. *Snowden* v. *Hughes,* 321 U.S. 1, 8, 64 S. Ct. 397, 88 L. Ed. 497 (1944). See particularly *Peterson* v. *Sharan,* 474 F. Supp. 1215 (D.C. Minn. 1979) aff'd in part 635 F. 2d 1335 (8th Cir. 1980).

The asymmetrical pattern (hardly a mosaic) of inconsistent and disparate disciplines by the Illinois Supreme Court for basically similar infractions of Rule 7-110(a) presents a substantial question as to whether Equal Protection was denied to Petitioner. See: *Lenske* v. *Sercombe*, 266 F. Supp. 609 (D.C. Ore. 1967) holding that lawyers making a substantial allegation of unequal treatment in disciplinary proceedings, legitimately raise an Equal Protection claim.

In *In re Serelas,* 497 F. 2d 926 (7th Cir. 1974) the Court found that an attorney suspended by the Illinois Supreme Court was *not* denied equal protection merely beause a similar sanction could not be imposed upon a layman who committed the same misconduct. The rationale for that result is that there is a basic and reasonable classification between a layman and an attorney whose conduct is judged by a professional and higher standard. The clear converse, however, of the rule in *Serelas* is that if the same misconduct is committed by other lawyers, and if sanctions are unequally applied, denial of Equal Protection can legitimately be raised because a fundamental right (the right to practice law) is infringed, and an exemption of some offenders and not others, is irrational.

II

DUE PROCESS UNDER THE FOURTEENTH AMENDMENT WAS DENIED TO PETITIONER BECAUSE HE WAS DISCIPLINED BY THE STATE SUPREME COURT FOR INFRACTION OF A DISCIPLINARY RULE WHOSE MEANING WAS VAGUE AND DEBATABLE AND WHERE THE COURT EXCUSED OTHER LAWYERS FOR SIMILAR INFRACTIONS ON THE GROUND THAT THE COURT HAD NOT THERETOFORE ISSUED A "SETTLED OPINION" INTERPRETING THE RULE.

In the posture of the instant case, the observations of Mr. Justice White in concurring with the result in *In re Ruffalo,* 390 U.S. 544, 88 S. Ct. 1222, 20 L. Ed. 2d 117 (1968) are pertinent:

> A relevant inquiry in appraising a decision to disbar [substitute suspend] is whether the attorney stricken from the roll [substitute suspension] can be deemed

> to have been on notice that the court would condemn the conduct for which he was removed [suspended] . . . (390 U.S. at 554).

Comparable to the Illinois Supreme Court's judicial notice of "considerable belief among members of the Bar that they [the *Corboy* respondents] had acted properly" (*Corboy* at 45), Mr. Justice White noted the debatability of the ethics of the respondent in *Ruffalo*:

> Even when a disbarment standard is as unspecific as the one before us, members of a bar can be assumed to know that certain kinds of conduct, generally condemned by responsible men, will be grounds for disbarment. This class of conduct certainly includes criminal offenses traditionally known as *malum in se*. It also includes conduct which all responsible attorneys would recognize as improper for a member of the profession. (390 U.S. at 555).

A gift or a loan to a judge is not *per se* illegal or *malum in se*. The absence of guiding precedent by the State Supreme Court at the time of Petitioner Karzov's alleged misconduct brings him within the ambit of the rule in *Ruffalo*.

The attorneys in *Corboy*, were described by the court as "outstanding". (124 Ill. 2d at 46). If "outstanding attorneys" were absolved from discipline because at the time of their conduct they were not aware of Rule 7-110(a), and acted without the "guidance of precedent", *a fortiori* Petitioner, not claiming prominence, was denied Due Process in being disciplined under the same rule notwithstanding the circumstances of his ignorance of the rule and lack of "guidance of precedent".

See *In re Inquiry Concerning a Judge* 357 So. 2d 172, 181 (Sp. Ct. Fla. 1978) (Retroactive application of a disciplinary rule violates both procedural and substantive due process as well as being "unfair").

Finally, the Illinois court in the *Corboy*, and subsequent cases applying Rule 7-110(a), has posited an irrational and untenable distinction as to the irrelevance of motive or state of mind as a factor in determining a violation, while holding that motive

or state of mind is material or relevant to the quantum of discipline.

The flawed reasoning of the Illinois court has resulted in an anomaly: Rule 7-110(a) is violated irrespective of motive. But no discipline is imposed where an alleged good motive accompanies conduct which violates the rule. Hence, the result is exactly the same as if the offending lawyer had not violated the Rule at all. The result reached in *Corboy* and *Jones* is contrary to the established proposition that motive may be a mitigating or aggravating factor but not an absolving factor.

CONCLUSION

The Illinois Supreme Court, in holding that motive is irrelevant in finding a violation of its Rule prohibiting an attorney from giving or lending a thing of value to a judge, while at the same time ruling that certain "outstanding" attorneys should not be sanctioned because of their alleged good motives, and while imposing discipline against other similarly situated attorneys, such as Petitioner, has produced an irrational and invidious result contrary to the Equal Protection and Due Process safeguards of the Fourteenth Amendment.

For all of the foregoing reasons Petitioner respectfully prays that this Court grant the PETITION FOR WRIT OF CERTIORARI.

Respectfully submitted,

SIDNEY Z. KARASIK
100 West Monroe Street
Chicago, Illinois 60603
(312) 782-7295

Counsel of Record

APPENDICES

APPENDIX A

OPINION OF THE SUPREME COURT OF ILLINOIS

Docket No. 65947—Agenda a (—March 1988.
In re ARNOLD JEROME KARZOV, Attorney, Respondent

JUSTICE MILLER delivered the opinion of the court:

As a result of activities uncovered by the Operation Greylord investigation of Judge Reginald J. Holzer, the Administrator of the Attorney Registration and Disciplinary Commission filed a two-count complaint charging the respondent, Arnold Jerome Karzov, with professional misconduct. The Administrator alleged that respondent engaged in two separate financial transactions with Judge Holzer and, in each instance, violated Rule 7—110(a) (giving or lending a thing of value to a judge); Rule 1—102(a)(3) (engaging in illegal conduct involving moral turpitude); Rule 1—102(a)(5) (engaging in conduct that is prejudicial to the administration of justice); Rule 1—103(a) (failing to report knowledge of a violation of Rule 1—103(a)(3) or (a)(4)); and Canon 9 (failing to avoid the appearance of professional impropriety) of the Illinois Code of Professional Responsibility (107 Ill. 2d R. 1—101 *et seq.*

A panel of the Hearing Board found for respondent on count I, against respondent on count II, and recommended that respondent be suspended from the practice of law from 15 months. Both respondent and the Administrator filed exceptions to the Hearing Board's report and recommendation. The Review Board disagreed with the Hearing Board, finding against respondent on both counts and recommending a two-year suspension from the practice of law. Respondent then filed exceptions with this court to the Review Board's report and recommendation. See 107 Ill. 2d R. 753(e)(5).

Respondent was licensed to practice law in this State in 1962 and, since his admission to the bar, has practiced primarily in the area of business law with an emphasis on chancery matters. Judge Holzer was assigned to the chancery division of the circuit court of Cook County from 1978 to 1985. For five or six of those years, respondent had 12 to 15 cases before Holzer, or approximately two to three case per year. Respondent knew Holzer on a first name basis but was not a social friend. The facts, findings,

and recommendations as to each count are set forth separately below.

COUNT I

Beginning in 1976, one of respondent's principal clients was Albany Bank and Trust Company, N.A. (Albank), for whom he acted as general counsel. Respondent owned about 2% of Albank's stock and was secretary to the board of directors, but was neither a director himself nor a member of the loan committee. In February 1981, respondent had one case pending before Holzer. (Albany Bank & Trust Company v. Helfer (Cook Co. Cir. Ct.), No. 80—CH—9046.) The case was a mortgage foreclosure proceeding brought by Albank on a delinquent mortgage.

In the same month, February 1981, respondent went to the outer office of Holzer's chambers to have an order file-stamped by Holzer's clerk. Present in the office with respondent were Holzer's clerk and several other attorneys who were also there to have orders file-stamped. While respondent waited, Holzer came into the outer office and asked respondent for the name of a loan officer at Albank. Respondent gave Holzer the name of a senior loan officer, Mr. Joseph Kurtzke. Holzer then applied for a loan from Albank through Kurtzke. Later that month, Kurtzke called respondent for information about Holzer in connection with the loan. Kurtzke asked respondent whether he knew anything unfavorable about Holzer, and respondent replied that he did not. Then, on February 18, 1981, Holzer received a 24,000, unsecured loan from Albank.

The Administrator alleged that respondent had used his position as general counsel for Albank to help Holzer obtain the $24,000 loan and charged him with violating Rule 7—110(a), which prohibits giving or lending a thing of value to a judge, and also with violating the other Code provisions cited above. At the hearing, the Administrator's evidence consisted of respondent's testimony about the circumstances surrounding the loan and a loan memorandum form prepared by Kurtzke in the course of processing Holzer's loan application. The circumstances surrounding the loan showed that respondent's practice caused him to appear before Holzer periodically, that Holzer knew respondent represented Albank, and the Albank then had a case

pending before Holzer. The loan memorandum listed respondent's name under a heading entitled "SOURCE." The same memorandum also contained the following statement under a heading entitled "OTHER INFORMATION":

> "Judge Holzer has been well and favorably known to Mr. Karzov for many years. * * * We recommend approval as presented."

To rebut the Administrator's evidence, the respondent testified that he was not the "source" of the loan as stated on the loan memorandum. In support of his denial, respondent called as a witness Dr. Martin L. Gecht, chief executive officer and chairman of the board of Albank. Gecht testified that he knew Holzer from various social and civic affairs and from serving on the executive committee of another bank which had loaned Holzer money. Gecht further testified that around the time the loan was made, Holzer had asked him whether Albank would entertain a $10,000 loan to him. Gecht told Holzer that it would and suggested that Holzer call someone at the bank and let them know that Gecht had told Holzer to call. Gecht explained that the purpose of the information listed under the heading "SOURCE" was to tell the loan committee how a loan applicant had come to the bank. Gecht testified that when he and the other directors had given final approval for the loan to Holzer, he had not believed that respondent was the source of the loan.

Respondent also denied the validity of the loan memorandum's notation that Holzer was well and favorably known to him for many years. Respondent stated that Kurtzke called him, explained that the bank was considering a loan to Holzer and asked respondent if he knew anything unfavorable about Holzer. Respondent testified that in response to Kurtzke's inquiry he simply replied that he knew nothing unfavorable about the judge. Respondent further explained that Kurtzke's use of the phrase "we recommend approval as presented," in the memorandum was the loan officer's customary way of referring to himself and that it did not mean that respondent had recommended the loan be made to Holzer. Respondent stated that he neither was involved in nor recommended approval of the Holzer loan.

Based on the evidence presented, the Hearing Board dismissed the charges in count I. In resolving the conflicting evidence concerning respondent's involvement in the Holzer loan, the Hearing Board accepted respondent's explanation of the events. The Board then concluded that, by merely giving Holzer the name of a senior loan officer at Albank and by answering the officer's inquiry, respondent had not given the judge a "thing of value" for the purposes of Rule 7—110(a) and that he had not engaged in conduct in violation of Rule 1—102, Rule 1—103 or Canon 9.

The Review Board disagreed with the Hearing Board's findings of fact and then concluded that respondent's actions constituted professional misconduct. The Review Board found that respondent had not merely given the name of a senior loan officer to Holzer but that he had used his position as Albank's attorney to enable Holzer to obtain the unsecured loan. The Review Board concluded that respondent's assistance to Holzer constituted a "thing of value " under Rule 7—110(a)

In rejecting the Hearing Board's factual determinations, the Review Board relied on (1) the loan memorandum's designation of respondent as the source of the loan, and (2) respondent's grand jury statement, offered to impeach respondent's prior testimony, which stated that respondent's referral of Holzer to the bank somewhat improved Holzer's position. At the hearing, however, respondent had denied the import of the notation on the loan document and the implication of influence contained in the grand jury statement. The hearing panel had resolved these disputed questions in respondent's favor.

In attorney discipline cases, where the resolution of a contested question of fact depends on the credibility of the testimony of a witness, this court gives deference to the Hearing Board's finding on that fact. In such cases, deference is given to the Board's factual determinations because, as the initial trier of fact, the Hearing Board panel is able to observe witnesses' demeanor and to judge their credibility. (*In re Hopper* (1981), 85 Ill. 2d 318, 323.) Thus, we will generally not disturb the Board's factual findings unless they are against the manifest weight of the evidence. (See *In re Ushijima* (1987), 119 Ill. 2d 51, 56-57.) In this case, the Hearing Board panel believed respondent's

account regarding his participation in the loan. The Board's finding on this disputed question is supported not only by respondent's own testimony but also by that of Gecht. Therefore, unlike the Review Board, we find no reason to disturb the Hearing Board's finding on the extent of respondent's involvement in the Holzer loan.

We note that, at the hearing, the panel expressed its concern with the Administrator's failure to call Kurtzke, the one individual who could have explained how Holzer's loan was submitted. Under these circumstances, we cannot say that Board erred in its determination that the Administrator's evidence fell short of the clear and convincing standard required in attorney disciplinary proceedings. See 107 Ill. 2d R. 753(c)(6); see also *In re Moore* (1956), 8 Ill. 2d 373, 379.

Having accepted the Hearing Board's finding that respondent's only participation in the Holzer loan was the giving of a loan officer's name to the judge and the subsequent response to that officer's inquiry, we are left to determine whether respondent's conduct constituted giving a thing of value to a judge. Although we give normal deference to the Hearing Board's findings of fact, we are not required to give deference to conclusions of law. See *In re Anglin* (1988), 122 Ill. 2d 531, 538-39; *In re Carr* (1941), 377 Ill. 140, 143.

In determining whether respondent's actions constituted a thing of value, we look to see whether the information that respondent gave to Holzer and Kurtzke conferred a benefit upon Holzer. (See *In re Ketchum* (1988), 124 Ill. 2d 50, 59.) By furnishing Holzer with Kurtzke's name, respondent did not give Holzer a thing of value since the names of Albank's officers were available to the general public. Moreover, there was no evidence that a loan applicant was more likely to obtain a loan (or a loan on more favorable terms) by applying for it through Kurtzke rather than some other loan officer at Albank. While respondent may have saved Holzer the effort of obtaining a loan officer's name from another source, responding to an inquiry such as that made by Holzer without more does not constitute a thing of value for the purposes of rule 7—110(a).

Likewise, respondent did not provide a benefit to Holzer by telling Kurtzke that he knew nothing unfavorable about the judge. Respondent's comment was an apparently truthful response to an inquiry initiated by respondent's client. The hearing panel determined that respondent did not recommend or even suggest that Holzer receive a loan from Albank. Moreover, there was no evidence that respondent offered any opinion regarding Holzer's creditworthiness or financial stability.

Because of the absence of Kurtzke's testimony to the contrary and the ambiguity of the language in the loan memorandum, we accept respondent's explanation of the statements contained in the bank document. Further, in the absence of evidence to the contrary, we accept respondent's account of the grand jury statement, as did the hearing panel. Respondent explained that the statement was prepared by a government attorney after a conversation with respondent concerning the loan transaction and that it expressed conclusions drawn by respondent before he learned of Gecht's involvement in initiating the loan.

Based on the facts as found by the Hearing Board, we conclude that the Administrator has not shown that respondent violated Rule 7—110(a), Rule 1—102(a)(5), Rule 1—103(a) or Canon 9, as charged in count I. Accordingly, the charges in count I are dismissed.

COUNT II

In count II, the Administrator charged that respondent violated the same disciplinary rules as charged in count I, by delivering $1,000 cash to Holzer when the judge requested a loan. At a hearing before a panel of the Hearing Board, the evidence showed that on November 23, 1981, at the request of Ernest Worsek, a receiver in a chancery case, Holzer appointed respondent as Worsek's attorney. In May 1982, respondent terminated his duties as attorney for the receiver, at which time Holzer approved his petition for attorney fees of $4,950. Seven months later, on the morning of December 20, 1982, the receivership was ended.

On the afternoon of December 20, 1982, Holzer called respondent and asked him to come to Holzer's chambers at the

Daley Center. Upon respondent's arrival, Holzer recessed court and took respondent into his inner chamber. Holzer then told respondent that he was going on vacation and needed a $1,000 loan to tide him over until after the first of the year. When respondent asked if a check would be satisfactory, Holzer replied that he would prefer cash. Respondent then withdrew the $1,000 from his safe-deposit box and gave it to Holzer that same day. No promissory note was signed, no rate of interest was discussed and no terms of repayment were set forth. Holzer eventually repaid respondent half of the loan but only after the Federal investigation into Holzer's conduct had begun.

At his hearing, respondent testified that he was shocked by Holzer's request for money, that he did not want to lend Holzer the funds, and that he resented being put in what he considered an untenable position. Respondent explained that he reluctantly acceded to Holzer's request because having had cases before Holzer in the past, he anticipated appearing before him in the future. Respondent stated that he feared refusing the judge would cause Holzer to retaliate against him or his future clients.

Although at the time of the loan respondent did not have any cases pending before Holzer, respondent testified that he later represented at least one client in a case before the judge. Respondent testified that he failed to disclose his financial dealings with Holzer to the parties or opposing counsel in that case, and that he did not report Holzer to the Judicial Inquiry Board or law enforcement authorities. At the hearing, however, respondent did produce seven character witnesses who testified favorably as to his reputation for honesty and integrity.

Based upon the evidence presented, the Hearing Board concluded that respondent's $1,000 loan to Holzer constituted an ethical violation and recommended a 15-month suspension. After rejecting the Hearing Board's findings on count I, the Review Board agreed with the Hearing Board's findings of fact as to count II, but recommended a two-year suspension.

Respondent concedes before this court that he committed an ethical violation by lending Holzer money. Respondent argues, however, that a two-year suspension is an unduly harsh sanction and that it is not justified by the circumstances of the misconduct.

Respondent contends that, in determining the severity of discipline, this court should consider whether the misconduct in question was prompted by corrupt or dishonest motives. Respondent argues that there is a qualitative difference between a bribe and a loan. Respondent asserts that when he delivered the $1,000 in cash to Holzer he believed it to be a true loan and, for this reason, he is less blameworthy than he would be had he considered it a bribe. The Administrator, on the other hand, contends that respondent's actions warrant disbarment.

We recognize that this court has previously been guided by the absence of improper motives when determining an appropriate sanction. (See, *e.g., In re Clayter* (1980), 78 Ill. 2d 276; *In re Ahern* (1961), 23 Ill. 2d 69.) In this case, however, respondent testified at his hearing and admitted to this court that, while he resented Holzer's request for money, he agreed to the loan to avoid possible retaliation by Holzer against his clients in the future. Respondent was not motivated by charity or compassion for Holzer but by a desire to avoid adverse rulings in cases he anticipated having before the judge. (*Cf. In re Corboy* (1988), 124 Ill. 2d 29, 39, 48, 49 (no findings of improper motives).) Because respondent's motives in making the loan in this case were designed to influence Holzer in judicial decisions, we determine that substantial discipline is warranted.

Still, we cannot agree with the Administrator that this is a proper case for disbarment. At the time of the loan in December 1982, respondent did not have a case pending before Holzer. Although the receivership was not formally terminated until the day the loan was made, respondent's duties as attorney for the receiver had ended seven months before, at which time Holzer had approved respondent's petition for attorney fees. While the absence of a pending case does not excuse respondent's conduct, this factor may be taken into account in determining the severity of sanction. In *In re Powell* (December 15, 1988), No 65387, we considered the fact that the respondent there had a case pending at the time of his misconduct as an aggravating factor. Moreover, unlike the respondent in Powell, the respondent here did not aggravate his misconduct by involving a client in the plan. See *Powell,* slip op. at 11.

In *In re Ketchum* (1988), 124 Ill. 2d 50, the respondent made several loans to Judge Richard LeFevour over the course of several years. At the time of the loans, LeFevour was the presiding judge of a district in which the respondent had numerous cases pending. Although LeFevour had never been personally involved in any of the respondent's cases, there was a "real possibility that the respondent might be the beneficiary of LeFevour's favor in the future." (*Ketchum,* 124 Ill. 2d at 59.) Having found that the loans to LeFevour were made with the intent to receive a possible benefit from LeFevour, we suspended the respondent for two years. The length of the suspension was based in part on the repeated nature of the violations. (*Ketchum,* 124 Ill. 2d at 61.) Respondent's misconduct in this case is similar in several respects to that in *Ketchum* but was a single act rather than a recurrent current course of conduct.

Because of the circumstances of this case, we find that a suspension from the practice of law for 18 months is appropriate. Accordingly, respondent is suspended for 18 months.

Respondent suspended.

JUSTICE STAMOS took no part in the consideration or decision of this case.

APPENDIX B

No. 65947

In The
Supreme Court of Illinois

In the matter of:

ARNOLD JEROME KARZOV,

Attorney-Respondent.

On Appeal by Respondent from a recommendation of suspension for two years by the Review Board in Disciplinary Case Administrator's No. 86 CH 155

PETITION FOR REHEARING

Now comes the Attorney-Respondent in the subject disciplinary case by SIDNEY Z. KARASIK, his attorney, and, pursuant to Rule 367, respectfully petitions the Court for a rehearing of the decision of this Court entered December 15, 1988.

In support hereof Respondent respectfully submits that the Court overlooked or misapprehended the points hereafter argued.

The Court correctly dismissed Count I of the charges against Respondent, but has seriously erred in respect to the evidence and circumstances pertaining to Count II.

I.

The Court has been inconsistent in its interpretation of Rule 7-110(a) and the discipline it has imposed on various lawyers for violations thereof.

Prior to the instant decision and the first batch of this Court's discipline cases pertaining to Rule 7-110(a) and the Operation Greylord scandal, the Court was apprised of a "crazy quilt" of inconsistent and disparate recommendations which emanated from the ARDC with respect to the discipline to be imposed for infractions of that Rule.

Uniformity of discipline for like cases was also urged upon the Court by various briefs of *amici curiae*. It is greatly disappointing therefore, that the Court has now issued a number of decisions including the instant one, which reveals a differing standard with respect to the sanction imposed on different lawyers for breach of the same Rule, even where the underlying circumstances are basically similar.

Until this Court's decision in *In re: Corboy*, 124 Ill. 2d 29 (decided June 20, 1988) Rule 7-110(a) had never come up for interpretation by the Court. In that case and in the related case of *In re: Ketchum*, 24 Ill. 2d 50 (June 1988), the Court proclaimed Rule 7-110(a) to be a "prophylactic rule" and therefore to be interpreted and applied strictly. After reviewing the evidence involving the respondents in *Corboy*, the Court said, at p. 45:

> For the foregoing reasons, we hold that these four respondent violated Rule 7-110(a). However, we hold that we cannot censure any of these respondents for their conduct. *They acted without the guidance of precedent or settled opinion, and there was, apparently, considerable belief among members of the bar, that they had acted properly.** (Citing *In re: Friedman*, 76 Ill. 2d 392; *In re: Luster*, 12 Ill. 2d 25 (1957)). (Emphasis added).

In the case at bar, even if Mr. Karzov can be held to have violated Rule 7-110(a), he, like the respodnents in *Corboy* acted "without the guidance of precendent or settled opinion." In all fairness, Respondent is entitled to the same generous consideration that the Court rightly accorded the respondents in *Corboy*.

Suspension of Respondent is not fair or consistent with other recent discipline cases involving violations of Rule 7-110(a). Under Count II Respondent is ordered suspended for 18 months for making a single, very short term, cash loan of $1,000 to Judge Holzer to "tide him over until after the first of the year." Although, as the Court notes, "no promissory note was signed, no rate of

---

*Counsel for the instant respondent shares the belief that *Corboy* and his fellow respondents should never have been charged in the first place.

interest was discussed and no terms of repayment were set forth" (Opin. 6), there is no question that the transaction was intended as a loan and nothing else. The check which Respondent offered to make the loan would have been documentary evidence of the loan. Holzer's promise to repay the loan within a short period obviated the need for a note, and indeed, Holzer eventually repaid half of the $1,000.

The instant single loan transaction involving Holzer is somewhat similar to the several loan transactions made to Judge LeFevour by attorneys Samuel V. P. Banks and Patrick A. Tuite, two of the respondents in the consolidated *Corboy* cases, supra. Unlike the single loan transaction between Karzov and Holzer, both Banks and Tuite each made several loans to the judge. But like the instant case, LeFevour did not pay interest on the loans or sign promissory notes to Banks and Tuite. Unlike the instant case where Karzov received at least the payment of half of his $1,000, LeFevour did not repay the loans made by Banks and Tuite. Also, unlike the instant case, where Karzov had no cases pending before Holzer at the time of his loan, both Banks and Tuite had "numerous cases pending in the First Municipal District of the Circuit Court" where LeFevour was the presiding judge. The full circumstances of the loans to LeFevour are set forth in the *Corboy* opinion, 124 Ill. 2d 47-48.

While clearly Banks and Tuite, like the other *Corboy* respondents were held to have breached rule 7-110(a), nevertheless they were completely exonerated on the following rationale:

> Here, as in the cases of respondents Corboy, Maddux, Harte and Madler, respondents Tuite and Banks *were sailing in uncharted waters.* In fact, the record discloses that these respondents were not aware of the prohibition of Rule 7-110(a) and certainly could not have been aware of the construction that we have, *for the first time*, placed on that rule in this opinion. (124 Ill. 2d at 49) (Emphasis added).

The sound reasons which persuaded the Court to exonerate Banks and Tuite for their admitted violation of the "prophylactic" Rule 7-110(a) should consistently and evenhandedly apply to Respondent in the case at bar. Respondent was not aware of

the existence of the rule on December 20, 1982 when he made the $1,000 loan to Holzer (under extortionate circumstances, as hereafter discussed) and certainly there was no guiding precedent by this Court. The purported distinction which the Court draws between Karzov's case and the *Corboy* cases, is on analysis not tenable. See discussion under Point III post.

In even sharper contrast to the case at bar is the total leniency of the Court in *In re: Mark E. Jones, Jr.*, Doc. No. 66227, Slip Opin. Dec. 1988). In *Jones*, respondent is charged with violating Rule 7-110(a) by obtaining a $15,000 bank loan at Holzer's request and then delivering the loan proceeds to Holzer. The Court notes that while neither respndnent there nor any member of his law firm had ever represented a client before Holzer, nevertheless, "respondent did appear before Holzer *while representing himself in a purely personal matter*". (Slip. Opin., p. 2). Holzer made only one interest payment on the Jones loan. Respondent ultimately had to pay off the entire bank loan, sued Holzer, but was unable to collect on the judgment.

The court in *Jones* itemized a number of "recognized exceptions" to Rule 7-110(a) in the Code of Judicial Conduct but went on to say that, "none of the recognized exceptions are applicable [to *Jones*] . . . and that Respondent's loan to Judge Holzer did not fall within any of the permissible exceptions, *and thus violated Rule 7-110(a)*" (*id.* at p. 5). Indeed, the court in *Jones* remarks:

> The relationship of the parties, coupled with the size of the loan, might suggest that respondent was not motivated entirely by charity and compassion for the financially strapped Holzer. (*id* at p. 6).

Nevertheless the court concludes that respondent's misconduct did not warrant any discipline under Rule 7-110(a) merely because "the Administrator has failed to prove that respondent's misconduct was accompanied by any corrupt or improper motive" (*id* at p. 7) – *notwithstanding that in the Corboy cases, construing the "prophylactic" nature of the rule, the court ruled that a motive, good or bad, is irrelevant to a determination of breach of the rule and the imposition of discipline!*

In several critical respects the conduct of the attorney in *Jones* is a more egregious transgression of rule 7-110(a) and his motive no more innocent than in the case at hand. *A fortiori* the reasons which persuaded the court to exculpate Jones would consistently apply to Karzov.

II.

Differential and disparate discipline imposed on Respondent while other attorneys are exonerated for an admitted infraction of the same Rule, violates the Equal Protection clause of the Fourteenth Amendment of the Federal Constitution and Art. I, Sec. 2 of the Illinois Constitution.

This Court has often expressed the principle that "uniformity in discipline" should be achieved wherever possible. *In re James G. Andros*, 64 Ill. 2d 419 (1976); *In re Joseph C. Saladino*, 71 Ill. 2d 263 (1978) ("predictability and fairness require a degree of consistency in similar types of misconduct").

Although not articulated as such, the rationale for the "uniformity in discipline" rule is tacit recognition that attorneys confronted with charges of professional misconduct have certain rights under the Due Process and Equal Protection provisions of both the federal and state constitutions.

Before specifically addressing the Equal Protection question, Respondent respectfully cites to the Court a number of general constitutional propositions which the Supreme Court of the United States and other courts, including this one, have followed:

In *Baird* v. *State Bar*, 401 U.S. 1 (1971) the court ruled (p. 8):

> The practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character.

In *Wilner* v. *Committee on Character*, 373 U.S. 96, 103-104 (1963), the court citing *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 238-239, ruled that:

> 'A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal

Protection clauses of the Fourteenth Amendment.'

In *Konigsberg* v. *State Bar of California*, 366 U.S. 36, 45 (1961) the high court held that state court rules in respect to professional conduct were to be treated in the same manner as statutes in determining whether there has been a violation of Due Process or Equal Protection.

Particularly pertinent is the ruling in the seminal case *Cohen* v. *Hurley*, 366 U.S. 117, 129 (1961). The court held:

> The issue is not, of course, *whether* lawyers are entitled to due process of law in matters of this kind, but, rather, *what* process is constitutionally due them in such circumstances. We do not hold that lawyers, because of their special status in society, can therefore be deprived of constitutional rights assured to others, but only, as in all cases of this kind, that what procedures are fair, the state process is constitutionally due, *what distinctions are consistent with the right to equal protection*, all depend upon the particular situation presented . . . (Emphasis added).

In the case at bar Respondent respectfully claims that in view of the different standard applied in the imposition of discipline under Rule 7-110(a) in the *Corboy* cases and in *Jones*, supra, a serious question of Equal Protection is here involved. The constitutional cases above cited establish that Respondent is a member of a protected class–i.e., protected under both the federal and state constitutions--and that the demonstrated differential and unequal discipline between members of the same class infringes upon the Equal Protection clauses.

The United States Supreme Court has held that attorney discipline is a "quasi-criminal proceeding". *In re Ruffalo*, 390 U.S. 544, 551 (1968). Therefore, Respondent's claim of unequal protection is closely analogous to a charge that criminal laws have been discriminatorily enforced. See: *United States* v. *Scott*, 521 F. 2d 1188, 1195 (9th Cir. 1975); *United States* v. *Alarik*, 439 F. 2d 1349, 1350 (8th Cir. 1971); *United States* v. *Sacco*, 428 F. 2d 264, 271 (9th Cir. 1970); *Moss* v. *Hornig*, 314 F. 2d 89, 91 (2d Cir. 1963).

Courts have applied the same standard even when no criminal sanctions are involved. *Snowden* v. *Hughes*, 321 U.S. 1, 8 (1944). See particularly *Peterson* v. *Sheran*, 474 F. Supp. 1215 (D.C. Minn. 1979, Aff'd in part 635 F. 2d 1335 (8th Cir. 1980).

The emerging pattern of inconsistent and disparate disciplines for basically similar infractions of Rule 7-110(a) raises a substantial question as to whether Equal Protection is being denied to Respondent. See *Lenske* v. *Sercombe*, 266 F. Supp. 609 (D.C. Ore. 1967) holding that attorneys making a substantial allegation of unequal treatment in disciplinary proceedings legitimately raise an Equal Protection claim. In *In re Sarelas*, 497 F. 2d 926 (7th Cir.) the court found that an attorney suspended from practice was not denied Equal Protection on the ground a similar sanction would not be imposed upon a layman who committed the same misconduct. The clear converse of the *Sarelas* rule is that if the same misconduct is committed by other attorneys the denial of Equal Protection could legitimately be raised because a fundamental right (the right to practice law) could be infringed.

III.

The Court misapprehended certain critical points of evidence under Count II which justifies rehearing and reconsideration of the discipline imposed.

The opinion of the Court recites:

> We recognize that this court has previously been guided by the absence of improper motive when determining an appropriate sanction. [citations] In this case, however, respondent testified at his hearing and admitted to this court that, while he resented Holzer's request for money, he agreed to the loan to avoid possible retaliation by Holzer against his clients in the future. Respondent was not motivated by charity or compassion for Holzer, but by a desire to avoid adverse rulings in cases he anticipated having before the judge. (*Cf In re Corboy* (1988) 124 Ill. 2d 29, 39, 48, 49 (No findings of improper motives).) Because respondent's motives in making the loan in this case were *designed to influence Holzer in judicial decisions,*

we determine that substantial discipline is warranted. (Opin. 7-8) (Emphasis added).

Respondent respectfully invites the Court to consider the following points which make the foregoing basis for the Court's ruling inappropriate.

1. At the time of making the loan which was solicited by Holzer, and not offered by Respondent, Respondent had no cases pending before Holzer and could not know if ever again he would have cases before Holzer. (*Cf In re Jones*, supra.)

2. Respondent's laudable desire to protect his clients from unfair rulings–if ever his cases became before Holzer again–can hardly be equated with a venal or corrupt motive of trying to influence a judge to obtain favorable treatment. Respondent did not testify, nor was there any evidence that in making the loan Karzov was seeking favorable treatment. Respondent's motive was simply to insure, hopefully, that Holzer would honor his judicial obligation to be fair and impartial. (*Cf In re Michael Robert Kien*, 69 Ill. 2d 355 (1977)). Certainly Respondent had no corrupt or improper motive in being concerned that his clients, should they ever have any cases before Holzer, not become victims of bias or hostility merely because Respondent refused Holzer's demand for a short term loan.

3. The Hearing Panel expressly found:

> He [Karzov] concluded the best thing to do would be to make the loan and 'allow him to *victimize me* in that way.' He said that *he did not expect favored treatment and he asked for none.* (Hrg. Bd. Rpt. 7). (Emphasis added).

Given that the Court observes ". . . We give normal deference to the Hearing Board's findings of fact. . . " (Slip Opin. 5) it is anomalous that the Court fails to give deference to the Hearing Board's finding that Respondent did not have an improper motive in reluctantly making the loan, that Respondent sought no favors and indeed, received none.

Citing *In re Corboy*, supra, the Court contrasts Karzov's motives with those of the *Corboy* respondents and observed that

in that case there were "no findings of improper motives". (Slip Opin. 8). The Court overlooks the thrust of the *Corboy* decision that a good or bad motive is not a relevant element in finding a violation of Rule 7-110(a). In the companion case, *In re Ketchum*, 124 Ill. 2d 50 the court said, at pp. 57-58:

> In . . . [*Corboy*, supra] we held that evidence of dishonest intent and motive is not necessary to justify imposition of discipline [citation]. . . . We further held that evidence showing a lack of dishonest intent is usually only appropriate to determine the nature and severity of the sanction imposed. [citation].

4. One of the critical points which persuaded the Court to impose discipline in *Ketchum*, not in *Corboy*, was that Mr. Ketchum admitted that he was aware of Rule 7-110(a) at the time he made the loans or gifts to Judge LeFevour, whereas in *Corboy* respondents were not aware of the rule. In the case at bar Mr. Karzov, like the *Corboy* respondents, was not aware of the rule. Hence, the reasons which persuaded the Court to suspend the respondent in *Ketchum*, did not apply in the instant case.

5. Respondent's loan to Holzer was made under extortionate circumstances. The Court overlooks or ignores the extreme stress and sudden pressure to which Respondent was put. He was caught by surprise and had no time to reflect on the ramifications of the "velvet" extortion which Holzer exercised. (*Cf* the fact that the loan transactions made by the *Corboy* respondents were made under no such circumstances, that respondents there had plenty of time to determine whether or not their generosity to the judge, no matter how well intentioned, was improper. More critically, in the case at bar the Court overlooks that it was Holzer who summoned Respondent and solicited the loan under a veiled threat.

6. The Court overlooks that Respondent was placed in another agonizing dilemma in not reporting the loan he made to the judge to the authorities because, as he plausibly testified, "there would be no reason for anyone to believe him. There was no documentary evidence; and, indeed . . . there was no evidence whatsover . . . At that time the judge's reputation was excellent

and he [Respondent] believed that [Holzer's] credibility would be better than his [Respondent's] under he circumstances." (Hrg. Bd. Rpt. 7).

7. In its disposition of the *Corboy* and *Jones* cases, supra, the Court attaches significance to the fact that those respondents did not have any cases pending before the particular judge involved (LeFevour and Holzer). To the extent that this is a weighty factor, the Court overlooks that in the instant case Karzov had no case pending before Holzer when the loan was made–just as Messrs. *Corboy, Hart, Banks and Tuite* had no cases before LeFevour. (Actually some of the *Corboy* respondents had numerous cases in the Municipal Department over which Judge LeFevour presided).

CONCLUSION

For the reasons above discussed, Respondent deserves reconsideration of the judgment imposing 18-months suspension. Like the respondents in *Corboy* and *Jones* Respondent sailed "uncharted waters" because at the time of the offense, there was no guiding interpretation by this Court to Rule 7-110(a). Particularly pertinent to this aspect of the case is the observations in the United States Supreme Court in the seminal case, *In re Ruffalo*, 390 U.S. 544, 554 (1968):

> A relevant inquiry in appraising a decision to disbar [substitute suspend] is whether the attorney stricken from the roll [substitute suspension] can be deemed to have been on notice that the courts would condemn the conduct for which he was removed. [suspended]. . .

In the case at bar, as in the other cases above cited, the lack of guiding interpretation of Rule 7-110(a) at the time of the infractions certainly did not place Respondent on notice that this Court would condemn his conduct or impose the severe sentence which it did.

Respectfully submitted,

SIDNEY Z. KARASIK,
Attorney for Respondent

APPENDIX C

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

January 30, 1989

Mr. Sidney Z. Karasik
Attorney at Law
100 W. Monroe St. Suite 911
Chicago, IL 60603

No. 65947 - In re: Arnold Jerome Karzov. Disciplinary Commission.

The Supreme Court today DENIED the petition for rehearing in the above entitled cause.

Stamos and Calvo, JJ., took no part.

The mandate of this Court will issue to the appropriate Appellate Court and/or Circuit Court or other agency on February 9, 1989.

APPENDIX D

No. 65947

In the
Supreme Court of Illinois

In re: **Disciplinary Commission**
Arnold Jerome Karzov **DC86CH155**

O R D E R

This matter has come for consideration upon the motion of Arnold Jerome Karzov, appellant, to stay the mandate of this court pending appeal or application for *certiorari* in the United States Supreme Court.

IT IS ORDERED that the mandate of this court in the above cause is stayed pending the filing of a notice of appeal or an application for *certiorari* or the expiration of the period within which said application or notice may be filed. If *certiorari* is applied for or notice of appeal filed, the mandate of this court shall, upon proof of such filing being made by affidavit filed with the clerk of this court, be further stayed pending resolution by the United States Supreme Court of such application or appeal. If no such affidavit is filed, the mandate shall, without further order, issue upon the expiration of the time within which appeal or *certiorari* may be sought.

/s/ WILLIAM G. CLARK
Justice, Supreme Court of Illinois

FILED
FEB-7 1989
CHICAGO

Dated:

Supreme Court, U.S.
FILED
JUN 1 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1740

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

ARNOLD JEROME KARZOV,

Petitioner,

vs.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

RESPONDENT'S BRIEF IN OPPOSITION

JAMES J. GROGAN
203 North Wabash Avenue
Suite 1900
Chicago, Illinois 60601
(312) 346-0690

Attorney for Respondent

Of Counsel:
RUTHE A. HOWES

Photex — 444 North Wabash Avenue — Chicago 60611 — 321-0223

QUESTIONS PRESENTED

I. Whether Petitioner has failed to invoke federal jurisdiction pursuant to 28 U.S.C. § 1257(3).

II. Whether the inherent authority of the Supreme Court of Illinois to impose differing sanctions upon disciplined attorneys depending on the unique facts of each case contravenes the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

III. Whether the procedure employed by the Supreme Court of Illinois imposing discipline on Petitioner for his violation of long-established ethical principles violated the Due Process requirement of the United States Constitution.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

CONSTITUTIONAL PROVISION AND RULES INVOLVED. 2

INTRODUCTION. 4

SUMMARY OF ARGUMENT 5

ARGUMENT. 6

I. Petitioner has failed to invoke federal jurisdiction pursuant to 28 U.S.C. § 1257(3) 6

II. The inherent authority of the Supreme Court of Illinois to impose differing sanctions upon disciplined attorneys depending on the unique facts of each case does not contravene the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. 10

III. The Procedure employed by the Supreme Court of Illinois imposing discipline on Petitioner for his blatant violation of long-established ethical principles does not violate the Due Process requirement of the United States Constitution . . . 19

CONCLUSION. 22

TABLE OF AUTHORITIES

Cases: Page

Brinkerhoff-Farris Trust Co. v. Hill, 281 U.S. 673 (1930).....9

Consolidated Turnpike Co. v. Norfolk and Ocean View Railway Co., 228 U.S. 326 (1913).....7,8

Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975).....10

Great Northern Railway Co. v. Sunburst Oil and Refining Co., 287 U.S. 358 (1932).....8

In re Corboy, 124 Ill.2d 29, 528 N.E.2d 694 (1988).....passim

In re Daley, 549 F.2d 469 (7th Cir. 1977).....18

In re D'Angelo, 126 Ill.2d 45, 533 N.E.2d 861 (1989).....14

In re Heller, 126 Ill.2d 94, 533 N.E.2d 824 (1988).....14

In re Karzov, 126 Ill.2d 33, 533 N.E.2d 856 (1989).....passim

In re Ketchum, 124 Ill.2d 50, 528 N.E.2d 689 (1988).....14

In re Leonard, 64 Ill.2d 398, 356 N.E.2d 62 (1976).....19

In re Neff, 83 Ill.2d 20, 413 N.E.2d 1282 (1980).....10,17

In re O'Hallaren, 64 Ill.2d 426, 356 N.E. 2d 520 (1976).....19

In re Powell, 126 Ill.2d 15, 533 N.E.2d 867 (1989).....14

In re Rothenberg, 127 Ill.2d 139 (1989).14

In re Ruffalo, 390 U.S. 544 (1968).6,18,20

In re Saladino, 71 Ill.2d 263, 375 N.E.2d 102 (1978).....13

Middlesex County Ethics Committee, etc. v. Garden State Bar Association, 457 U.S. 423 (1982).....18

Missouri ex rel Missouri Insurance Co. v. Gehner, 281 U.S. 313 (1930).....9

Pulley v. Harris, 465 U.S. 37 (1984)....17

CONSTITUTION:

U.S. CONST. amend. XIV.....passim

STATUTES:

28 U.S.C. § 1257 (3).....passim

107 Ill.2d Rule 7-110.....passim

107 Ill.2d Rule 65(C)(4).....passim

107 Ill.2d Rule 771.....passim

No. 88-1740

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

ARNOLD JEROME KARZOV

Petitioner,

vs.

ATTORNEY REGISTRATION
AND DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ILLINOIS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS

RESPONDENT'S BRIEF IN OPPOSITION

CONSTITUTIONAL PROVISIONS INVOLVED

Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal Protection of laws. U.S. CONST. amend. XIV.

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: "(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. 28 U.S.C. § 1257.

RULES OF THE SUPREME COURT OF ILLINOIS AND ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION INVOLVED

Supreme Court Rule 7-110. Relationship with Officials. (1980)

(a) A lawyer shall not give or lend any thing of value to a judge, official, or employee of a tribunal, except that a lawyer may make a

contribution to the campaign fund of a candidate for such office.

Supreme Court Rule 7-110(a). Relationship with Officials. (Amended 1988)

"(a) A lawyer shall not give or lend any thing of value to a judge, official, or employee of a tribunal except those gifts or loans which a judge or a member of his family may receive under Rule 65(c)(4) of the Code of Judicial Conduct, except that a lawyer may make a contribution to the campaign fund of a candidate for such office."

Supreme Court Rule 65(c)(4). A Judge Should Regulate His Extrajudicial Activities To Minimize The Risk Of Conflict With His Judicial Duties.

(4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related law function or activity devoted to the improvement of the legal system, or the administration of justice;

(b) a judge or member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor or loan from a relative; a wedding or

engagement gift; loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a member of his family residing in his household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, including lawyers who practice or have practiced before the judge.

Supreme Court Rule 771. Types Of Discipline.

(a) disbarment;
(b) disbarment of consent;
(c) suspension for a specified period and until further order of court;
(d) suspension for a specified period of time;
(e) suspension until further order of the court;
(f) suspension for a specified period of time or until further order of the court with probation; or
(g) censure.

INTRODUCTION

For the sake of brevity, Respondent will not include sections in this brief for opinion below, jurisdiction, and statement of the case. Respondent will address in

Argument those portions of Petitioner's brief which Respondent considers inaccurate or inadequate.

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari to the Supreme Court of Illinois should be denied for the following reasons:

First, Petitioner has failed to invoke federal jurisdiction pursuant to 28 U.S.C. § 1257(3). Petitioner did not raise any federal constitutional claim until filing a petition for rehearing before the Supreme Court of Illinois. Petitioner has not demonstrated that he fits within any exception as he had reason to expect that the Court would decide the case as it did.

Second, Petitioner's right to equal protection was not contravened because the Court did not make Petitioner's sanction exactly the same as others who were found to violate the same disciplinary rule. Such flexibility is crucial to achieve the ultimate goals of the disciplinary system. The only issue in fact raised by this petition is an issue of state law, which the Illinois Supreme Court has already decided. Furthermore, disparate sentencing is not a proper basis for certiorari jurisdiction.

Third, Petitioner was not denied due process of law during the course of the disciplinary proceedings

against him. Petitioner received notice of the charge and an opportunity to defend in complete compliance with the due process requirements as mandated in In re Ruffalo, 390 U.S. 544 (1968).

ARGUMENT

I. Petitioner has failed to invoke federal jurisdiction pursuant to 28 U.S.C. § 1257(3).

Petitioner is required to demonstrate in his petition that this Court has jurisdiction to review the judgment of the Supreme Court of Illinois. Petitioner has failed to do so.

Petitioner first raised his federal constitutional claims of a denial of equal protection and due process in his petition for rehearing after the judgment of the Supreme Court of Illinois. (Pet. App.B, 1b-10b).

Raising a federal question for the first time in a petition for rehearing addressed to the highest state court is generally insufficient to invoke federal jurisdiction unless the court actually entertains the petition and expressly decides the question. Consolidated Turnpike Co. v. Norfolk and Ocean View Rail- way Co., 228 U.S. 326, 334 (1913). As the Illinois Supreme Court denied the petition in the instant case without entertaining the federal question (Pet. App. C, 1c), the general rule precludes review by this Court. To constitute a reviewable judgment under such circumstances, the order denying the petition for rehearing must be more than a cursory recitation that the petition has been fully or maturely considered and is accordingly denied. Consolidated

View Railroad Co., 228 U.S. 326, 333-334 (1913).

In order to invoke the jurisdiction of this Court to review a constitutional claim not timely presented to the Supreme Court of Illinois, Petitioner must establish that his case fits within an exception. Great Northern Railway Co. v. Sunburst Oil and Refining Co., 287 U.S. 358, 367 (1932). Petitioner has not set forth any claim nor authority asserting that he fits within an exception. The only exception Petitioner could possibly claim is that the Illinois Supreme Court rendered an unexpected decision, giving him no prior opportunity to anticipate or assert his federal claim, and the petition for rehearing constitutes his first and only chance to present the matter

to that court. Brinkerhoff-Farris Trust Co. v. Hill, 281 U.S. 673, 677-78 (1930); Missouri Insurance Co. v. Gehner, 281 U.S. 313, 320 (1930). Petitioner clearly fails to meet this test. First, Illinois Supreme Court Rule 771 provides for types of discipline that may be imposed for professional misconduct, including disbarment. Second, the Administrator has urged disbarment as a sanction for Petitioner throughout Petitioner's entire disciplinary proceeding, and particularly before the Supreme Court of Illinois. (Pet. Br. p. 4). Thus, Petitioner cannot assert that the Court's decision was unexpected or a surprise. In fact, Petitioner's sanction was less than the amount of discipline sought by the Administrator.

II. The inherent authority of the Supreme Court of Illinois to impose differing sanctions upon disciplined attorneys depending on the unique facts of each case does not contravene the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

Lawyer discipline is within the inherent authority of the state courts. See Goldfarb v. Virginia State Bar, 421 U.S. 773, 792 (1975). Supervision of attorney conduct is one of the most crucial functions of the Supreme Court of Illinois. See In re Neff, 83 Ill.2d 20, 413 N.E.2d 1282, 1284 (1980).

Petitioner was suspended from the practice of law for eighteen months by the Supreme Court of Illinois for giving $1,000 in cash to Judge Reginald Holzer, a Cook County circuit court chancery judge whom

Petitioner appeared before regularly.

On the afternoon of December 20, 1982, Holzer called Petitioner to his chambers. Holzer told Petitioner he, the judge, was going on a vacation the following day, that he was short of funds, and that he needed $1,000 in cash. Petitioner went to his bank that same day, removed $1,000 from a safety deposit box, returned to Holzer's chambers and gave the judge the $1,000. No promissory note was signed, no rate of interest was discussed and no terms of repayment were set forth. Holzer eventually repaid Petitioner half of the loan but only after a federal criminal investigation into Holzer's conduct had begun.

Petitioner was suspended for violating Rule 7-110(a) of the

Illinois Code of Professional Responsibility as amended in an attorney disciplinary case, In re Corboy, et al., 124 Ill.2d 29, 528 N.E.2d 694 (1988). Prior to the rule's amendment, Illinois strictly prohibited all loans or gifts from lawyers to judges except for campaign contributions to designated judicial campaign committees. Id. at 699. In Corboy, Rule 7-110(a) was amended to permit lawyer gifts and loans to judges if judges could accept the items pursuant to state judicial ethics guidelines. Id. As a result of the amendment, lawyers are, among other things, explicitly permitted to make gifts and loans to judges if they constitute common social courtesies or if the gifts are between members of a family. Id. at 701.

In selecting the amount of attorney discipline to be imposed, the Illinois Supreme Court balances the need to be consistent with a consideration of the unique facts of the particular case. See In re Saladino, 71 Ill.2d 263, 375 N.E.2d 102 (1978). Based on the unique facts of this case, including Petitioner's testimony at his hearing and his admission to the Illinois Supreme Court that, while he resented Holzer's request for money, he agreed in order to avoid possible retaliation by Holzer against his clients in the future, the Court suspended Petitioner. In re Karzov, 126 Ill.2d 33, 533 N.E.2d 856 (1989).

Petitioner erroneously contends that differential and disparate sentencing in attorney disciplinary cases violates the Equal Protection

Clause of the Fourteenth Amendment of the United States Constitution. In furtherance of this misguided notion, Petitioner asserts that because exactly the same sanction was not imposed in seven attorney disciplinary cases involving Rule 7-110(a)[1], the Court embarked on

---

1. In re Corboy et al., supra, (charges dismissed involving six attorneys who loaned money for the benefit of a judges mother. The Court found no improper motive was involved); In re Ketchum, 124 Ill.2d 50, 528 N.E.2d 689 (1988), (two-year suspension for making loans to a judge and soliciting a $1,000 contribution from the attorneys in Corboy, supra); In re Rothenberg, 127 Ill.2d 139 (1989), (one-year suspension for loans to Holzer); In re Powell, 126 Ill.2d 15, 533 N.E.2d 867 (1989), (disbarred for having a client post collateral for a bank loan for Judge Holzer whom the client had a case pending); In re D'Angelo, 126 Ill.2d 45, 533 N.E.2d 861 (1989), (disbarred for arranging car rentals for judges); In re Heller, 126 Ill.2d 94, 533 N.E.2d 824 (1988), (disbarred two attorneys for procuring bank loans for Judge Holzer, whom they practiced before regularly). In re

a spree of irreconcilable and irrational dispositions creating some sort of "crazy quilt" of decisions which contravene Equal Protection. A review of these cases clearly defeats Petitioner's argument. With the exception of Corboy, in which the Court specifically distinguishes facts and circumstances from other cases, substantial suspension or disbarment was imposed. Furthermore, Petitioner's eighteen month suspension falls within the range of imposed discipline.

Petitioner's basic underlying grievance is that he did not receive the same disciplinary sanction as certain attorneys in the Corboy case.

Karzov, 126 Ill.2d 33, 533 N.E.2d (1989), Instant Case. (Eighteen month suspension for $1,000 loan to judge Holzer).

In Corboy, six lawyers were found to have violated amended Rule 7-110(a). The Court declined, however, to impose sanctions upon them due to the unique facts surrounding their financial transactions.

This issue was specifically addressed by the Court, wherein the Court found "[Petitioner] was not motivated by charity or compassion for Holzer but by a desire to avoid adverse rulings in cases he anticipated having before the judge. (Cf. In re Corboy (1988), 124 Ill.2d 29, 39, 48, 49, 124 Ill.Dec. 6, 528 N.E.2d 694 (no findings of improper motives). Because [Petitioner's] motives in making the loan in this case were designed to influence Holzer in judicial decisions, we determine that substantial discipline is warranted." 533 N.E.2d at 860.

The Court was not required to make Petitioner's sanction consistent with others who were found to violate the same disciplinary rule. Final responsibility for determining discipline to be imposed on attorneys rests in the Supreme Court of Illinois. In determining the appropriate penalty, the Court may properly consider all facts and circumstances in aggravation and mitigation, including the attorney's actual conduct. See In re Neff, 83 Ill.2d 20, 413 N.E.2d 1282 (1980). Furthermore, this Court has rejected the notion that there is a constitutional right of proportionality of sanctions, even in criminal proceedings. See e.g., Pulley v. Harris, 465 U.S. 37 (1984). Even if it could be argued that a criminal defendant were entitled to

this type of proportionality, the concept should not apply to an attorney disciplinary proceeding. A disciplinary proceeding is simply not criminal in nature. In re Daley, 549 F.2d 469 (7th Cir. 1977) cert. denied 434 U.S. 829 (1977). Cf., In re Ruffalo, 390 U.S. 544 (1968). (Disciplinary proceedings, although sui generis, described as quasi-criminal).

Flexibility in imposing sanctions is neither arbitrary nor unconstitutional, but necessary to achieve the goal of safeguarding the public, maintaining the integrity of the profession and protecting the administration of justice. See Middlesex County Ethics Committee, etc. v. Garden State Bar Association, et. al., 457 U.S. 423, 434-35 (1982). To achieve fair results, the

disciplinary systems must be neither rigid nor mechanistic, but flexible enough to allow for the uniqueness of each case. See In re Leonard, 64 Ill.2d 398, 356 N.E.2d 62, 66 (1976). The Court must evaluate each situation independently because the circumstances of each case vary substantially and sanctions which are appropriate in one situation may be inappropriate in another even though the underlying offense is similar or even the same. See In re O'Hallaren, 64 Ill.2d 426, 356 N.E.2d 520, 523 (1976). The Illinois Court correctly applied these principles in deciding the proper sanction for Petitioner.

III. The Procedure employed by the Supreme Court of Illinois imposing discipline on Petitioner for his blatant violation of long-established ethical principles does not violate the Due Process requirement of the United States Constitution.

Petitioner argues that he was denied due process when the Illinois Court sua sponte amended Rule 7-110(a) in the Corboy case. His argument is meritless. In In re Ruffalo, 390 U.S. 544 (1967), this Court stated that an attorney in a disciplinary proceeding is entitled to due process to the extent that he receives notice of the charge and an opportunity to be heard. Id. at 550. Both requirements have been met. Respondent had notice that he was charged with making a proscribed loan to a judge. He was afforded ample opportunity to defend the charges and he did so in a vigorous manner.

Petitioner fails to understand that the Illinois Supreme Court did not retroactively apply a new standard to his conduct.

Petitioner's acts violated the former construction of Rule 7-110(a) as well as the new construction. In this case, Petitioner's actions were wrong under the prior disciplinary rule and wrong under the rule as amended. In that Petitioner knew that loans to judges were prohibited, he had more than fair warning that he could not engage in such activity.

In addition, Supreme Court Rule 771 provided Petitioner with sufficient notice that the state court had the authority to impose discipline ranging from censure to disbarment upon any finding of misconduct. 107 Ill.2d Rule 771. Thus the issue of appropriate sanction as raised by Petitioner is a matter of state law. No substantial federal questions exist.

In summary, the due process provision of the United States Constitution does not require a more exacting standard than that employed by the Supreme Court of Illinois. A clarification of a state ethics rule did not violate any equal protection or due process principles. Further, disparate sentencing is not a proper basis for certiorari jurisdiction.

CONCLUSION

For the reasons set forth above, Respondent respectfully submit the Petition for Writ of Certiorari be denied.

Respectfully submitted,

James J. Grogan

James J. Grogan
203 North Wabash Avenue
Suite 1900
Chicago, Illinois 60601
(312) 346-0690

Attorney for Respondent